IN THE HIGH COURT OF UTTARANCHAL
AT NAINITAL

First Appeal From Order No. 1302 of 2001
(Old No. 20 of 1991)

The New India Assurance Company Ltd.
Through its Divisional Manager
Bareilly ... Appellant

Vs

1. Smt. Kaushalya Rani
   Widow of Late Lekh Raj
2. Km. Santosh Kumari, D/o Late Lekh Raj
3. Km. Madhu Bala, D/o Late Lekh Raj
4. Sri Desh Raj S/o Late Sri Lekh Raj
   All r/o Bhagat Singh Chowk
   Rudrapur, Tehsil Kichha
   District Nainital
5. Sri Shyam Sunder S/o Davia Ditta
   R/o Balwant Colony
   P.O. Kichha
   District Nainital ... Respondents

Sri Rajesh Joshi holding brief of Sri T.A. Khan, learned counsel for the appellant
Sri Neeraj Upreti, learned counsel for the respondent

Hon'ble B.C. Kandpal, J.

This appeal has been filed under Section 173 of the Motor Vehicle Act by the Insurance Company – The New India Assurance Company Ltd. against the judgment and award dated 07.09.1990 passed by IInd Additional District Judge/M.A.C.T., Nainital in M.A.C. Case No. 252 of 1985 whereby the Tribunal has awarded an amount of Rs. 1,00,000/- (Less Rs. 15,000/- awarded under Section 92A) with interest @ 12% per annum w.e.f. 17.12.1985 to the claimants.

2. Brief facts giving rise to this present appeal are that on 06.07.1985 at about 08:30 p.m., the deceased – Lekh Raj was going towards Rudrapur from Badaipuri on his cycle. When he reached near Khnna Raies Mill, suddenly a matador

bearing registration No. DDT 9479 coming from Kadpur side in a very high speed hit the deceased. In the said accident, Lekh Raj sustained grievous injuries, due to which he died at the spot. At the time of accident, the deceased was running a pickle shop and earning Rs. 1500/- per month. According to the claimants, at the time of the accident, he was aged about 45 years. Therefore, the claimants filed a claim petition before the Tribunal concerned for Rs. 2,00,000/- as compensation.

3. The Insurance Company as well as owner of the vehicle in question contested the claim petition and filed their written statement denying he contents of the claim petition. They have further alleged that the accident occurred due to the negligence of the deceased.

4. On the basis of the pleadings of the parties, the Tribunal concerned framed relevant issues.

5. After assessing the entire evidence on record and after hearing learned counsel for the parties, the Tribunal awarded an amount of Rs. 85,000/- along with interest @ 12% per annum as compensation to the claimant w.e.f. 17.12.1985 vide judgment and award dated 07.09.1990.

6. Feeling aggrieved by the aforesaid judgment and award the New India Assurance Company Ltd. filed this present appeal before the Allahabad High Court which has been transferred to this Court after creation of separate State.

7. Heard Sri Rajesh Joshi holding brief of Sri T.A. Khan, learned counsel for the appellant, Sri Neeraj Upreti, learned counsel for the respondent perused the record.

8. Learned counsel for the appellant has argued that the Insurance Company had a limited liability of Rs. 15,000/- in this case, because the deceased was a third party. Hence under the provision of the old Act, the liability was upto an extent of Rs. 15,000/-.

9. I fail to appreciate the argument advanced by the learned counsel for the Insurance Company.

10. It appears to me that no pleading was taken by the Insurance Company before the Tribunal and further no ground has been taken by the appellant in the memo of appeal at the state of filing the appeal in this regard. The court below has discussed the evidence in detail and thereafter has come to the couclusion that it is the liability of the Insurance Company to pay the amount of compensation to the claimants.

11. I do not find any infirmity and illegality in the impugned judgment and award passed by the court below.

12. The appeal lacks merit and is liable to be dismissed. The impugned judgment and award dated 07.09.1990 passed by IInd Additional District Judge/M.C.A.T., Nainital in M.A.C. Case No. 252 of 1985 is hereby confirmed.

19. Accordingly, the appeal is dismissed in-limine. No order as to costs.

(B.C. Kandpal, J.)

15.12.2006
ASWAL